SINGAPORE REPORTS

THE "BENOI VI" SINDO TIMBER ENTERPRISES (PTE.) LTD. v. "BENOI VI" (OWNERS & ORS.)

[O.C.J. (Sinnathuray J.) April 9, 1979]
[Singapore — Admiralty in Rem No. 44 of 1974]

Practice & Procedure — Pleadings — Amendments — Delay — Injustice.

This was an application at the hearing of the action for amendments of the Statement of Claim filed by the plaintiffs on June 23, 1975. The defence was filed on January 8, 1976. The summons for directions was taken out on March 19, 1976 and discovery was had on June 9, 1976. Thereafter nothing happened. Counsel for the defendants strongly objected to these amendments and said that grave injustice would be done to his client if those amendments were allowed.

Held: the plaintiff who commenced the action had had the conduct of the action. He set the timing of the action. He called the tune. The court's duty then was to weigh which party would suffer graver injustice. In the circumstances of this case it was obvious that graver injustice would be suffered by the defendants if the amendments were allowed. The amendments were therefore denied.

APPLICATION.

Loh Boon Huat for the plaintiffs.

Cheong Yuen Hee (*Roy Chua* with him) for the 2nd defendants.

Sinnathuray J. (delivering oral judgment): This is an application, at the hearing of the action, for amendments of the statement of claim filed by the plaintiffs on June 23, 1975. The defence was filed on January 8, 1976. The summons for directions was taken out on March 19, 1976, and discovery was had on June 9, 1976. Thereafter nothing happened.

This morning counsel for the plaintiffs seeks to amend paragraph 8(b) of the statement of claim which sets out new and further particulars of negligence alleged against the defendants, and he further seeks to amend paragraph 10 thereof by an insertion of a new sub-paragraph which states substantially the same new further particulars set out in the amended paragraph 8(b). Counsel for the plaintiffs gave notice of these amendments to the solicitors for the defendants last Friday. The submission is that these amendments are necessary as they go to the root of the case, and that it is in the interest of justice that I should allow these amendments.

The cause of action arose on March 20, 1973. Seven days later the plaintiffs caused to be obtained a surveyor's report on the damaged vessel. Given a reasonable time, certainly in 1973 itself, long before the statement of claim was filed, the plaintiffs would have had the particulars of the damage to the barge. But in the statement of claim the plaintiffs alleged that they "are unable to give full particulars until discovery". That is to be found in paragraphs 8 and 10 of the statement of claim. Be that as it may, as I have just said, discovery was had on June 9, 1976. So then, for nearly three years after discovery, nothing was done. Indeed, nothing was done even after the dates were assigned for the hearing of the case, which was two months ago.

Mr. Cheong, counsel for the defendants, strongly objects to these amendments. He says that the second defendants sold the vessel, the barge, in the beginning of 1974, that the evidence is no longer available to the second defendants, that is to say, the second defendants have no opportunity to inspect the vessel relating to the allegations in the amended paragraph 8(b) and the new sub-paragraph in paragraph 10. The proposed amendments state that the stanchions on the starboard side of the vessel were inadequate in number and in strength and were placed too far apart and/or the sockets for the stanchions were not adequately or efficiently or correctly welded onto the vessel and were not of sufficient height and strength to support the stanchions and/or the bracings were not of sufficient height and strength and were not correctly or efficiently or adequately welded onto the vessel to support the stanchions to withstand the contemplated voyage. Counsel for the defendants says grave injustice will be done to his client if these amendments are allowed.

So then, both sides allege that there would be injustice. Admittedly, injustice there is going to be. But then, the plaintiff who commenced the action has had the conduct of the action. He sets the timing of the action. He calls the tune. My duty now is to weigh which party will suffer graver injustice. In my judgment it is obvious that graver injustice will be suffered by the defendants if the amendments are allowed. The amendments are denied.

Application disallowed.

Solicitors: *Donaldson & Burkinshaw; Chua, Hay & Wee.*

THE "VISHVA PRATIBHA"; SARATHI CO. v. "VISHVA PRATIBHA" (OWNERS OF); PORT OF BOMBAY, INDIA

[O.C.J. (Sinnathuray J.) April 18, 1980]
[Singapore — Admiralty in Rem No. 275 of 1974]

Shipping Law — Carriage of Goods — Limitation liability of £100 — Meaning of "£100 gold" — Carriage of Goods by Sea Act (Cap. 184), arts. IV r.5 and IX.

The plaintiffs in this case claimed damages from the defendants, the owners of the ship "Vishva Pratibha" of the Port of Bombay, India, for breach of contract and/or negligence in the carriage of 31 packages of handloom cotton lungies of the plaintiffs on board the said ship under a bill of lading of November 26, 1973 from Madras to Singapore.

At the hearing, the defendants admitted liability for 16 packages. As to 14 of them, they claimed limitation of liability of £100 sterling each under the Carriage of Goods by Sea Act (Cap. 184). As to the remaining two packages, the parties were agreed in the equivalent of Singapore dollars of Indian R. 1,737.25 as the damages to the packages were below the limit of liability under the Act.

The plaintiffs by reference to Article IX of the Carriage of Goods by Sea Act contended that it meant "£100 gold". They refused to accept the defendants' offer of £100 sterling per package.

Held: (1) the defendants were entitled to tender payment of the damages in pounds sterling;

(2) as the court could give judgment in a foreign currency, there was no need to invoke art. IX;